

COVINGTON & BURLING  
1201 PENNSYLVANIA AVENUE, N.W.  
P.O. BOX 7566  
WASHINGTON, D.C. 20044  
TELEPHONE: (202) 662-6000

ORIGINAL

TWX: 710 822-0005  
TELEX: 89-593  
CABLE: COVLING

June 6, 1991

Dear Ms. Secretary:

Here are six copies of a letter to Chairman Sikes to be associated with Docket No. 87-268. The original signature pages will be submitted for association with the docket file copy as soon as they are all received in this office.

Sincerely,

Jonathan D. Blake

RECEIVED

Enclosures

JUN 6 - 1991

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

ORIGINAL RECEIVED  
FILE

JUN 6 - 1991

June 6, 1991

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

The Honorable Alfred C. Sikes  
Chairman  
Federal Communications Commission  
1919 M Street, N.W. - Room 814  
Washington, D.C. 20554

87-268 ✓  
EX PARTE OR LATE FILED

Dear Chairman Sikes:

On April 12, 1991, MSTV sent you a memorandum listing HDTV assignment issues that it urged the Commission to address in an HDTV Notice of Proposed Rulemaking to be issued in the near future. Attached is a somewhat revised memo that incorporates the input of other key broadcast organizations. They join with MSTV in urging the course described in the attached memo.

Respectfully submitted,

CBS, INC.

By: /s/ Mark W. Johnson  
MARK W. JOHNSON  
Washington Counsel

CAPITAL CITIES/ABC, INC.

By: /s/ Sam Antar  
SAM ANTAR  
V.P.-Law & Regulation Dept.

NATIONAL ASSOCIATION OF  
BROADCASTERS

By: /s/ Edward O. Fritts  
EDWARD O. FRITTS  
President

NATIONAL BROADCASTING CO.

By: /s/ Michael J. Sherlock  
MICHAEL J. SHERLOCK, Pres.,  
Operations & Technical Serv.

PUBLIC BROADCASTING SERVICE

By: /s/ Paula A. Jameson  
PAULA A. JAMESON, Sr. Vice  
Pres., General Counsel & Sec'y.

ASSOCIATION OF INDEPENDENT  
TELEVISION STATIONS, INC.

By: /s/ James B. Hedlund  
JAMES B. HEDLUND  
President

ASSOCIATION FOR MAXIMUM  
SERVICE TELEVISION, INC.

By: /s/ Margita E. White  
MARGITA E. WHITE  
President

ASSOCIATION OF AMERICA'S  
PUBLIC TELEVISION STATIONS

By: /s/ Marilyn Mohrman-Gillis  
MARILYN MOHRMAN-GILLIS  
General Counsel

Enclosure

cc: Commissioner Andrew C. Barrett  
Commissioner Ervin S. Duggan  
Commissioner Sherrie P. Marshall  
Commissioner James H. Quello  
Mr. Thomas P. Stanley/Mr. Bruce A. Franca  
Richard E. Wiley, Esquire  
✓ Docket No. 87-268

June 6, 1991

MEMORANDUM

The Commission should promptly issue a Notice of Proposed Rulemaking in the ATV Inquiry. The Notice should aim to accomplish three things. First, it should lay out the procedure to be followed in bringing the ATV proceeding to a resolution. Second, it should set forth the Commission's tentative resolution of certain key remaining issues that are not contingent upon the outcome of ATV transmission system testing. Third, it should invite comment on still other issues as to which the Commission has not yet formed a position.

I.

The Notice should explain that the Commission intends to issue a table of ATV allotments/assignments at the same time and in the same proceeding as it adopts ATV technical standards but that the Commission cannot specify particular ATV allotments/assignments until the results of the ATV testing are available. The reason for seeking to issue one Report and Order on both standards and allotments/assignments is to prevent broadcasters from being, uniquely among all the video media, held back from offering ATV.

Accordingly, this Notice should explain that the Commission intends to resolve the allotment/assignment issues in a two-step process. In this first step, the Commission will adopt certain basic allotment/assignment principles from

which it will build an allotment/assignment model. Then in the second step it will feed the test results into that model and put out for public comment the proposed specific allotment/assignment plan.

## II.

The Notice would set forth certain principles that the Commission tentatively endorses, subject to notice and comment, and that it intends to adopt, or otherwise act on, in the first phase of the proceeding. These principles would include the following:

- The ATV allotment plan should replicate the Commission's existing table of allotments for NTSC channels.

- As a consequence, the ultimate Report and Order should contain a new table of allotments pairing new ATV channels with existing NTSC allotments, and more specifically assigning them to existing NTSC licensees and permittees.

- The first priority should be to make ATV assignments to existing NTSC licensees, then to permittees, then to NTSC channels as to which there are pending applications. Among vacant, wholly unapplied-for NTSC allotments, priority should be given to providing an ATV channel to vacant NTSC allotments that are reserved for noncommercial use.

- The ATV assignments should be designed to provide coverage that is no less than comparable to the interference-limited coverage areas of current NTSC stations. The assignments should maximize ATV coverage to the American public

without reducing existing NTSC coverage. It is expected that in major markets all ATV channels will be UHF.

-- The ATV allotment/assignment plan should make strong efforts to protect vacant noncommercial NTSC allotments. It also should seek to protect vacant commercial allotments, but that goal is a lower priority. The plan should not provide protection to LPTV and translator stations but should seek to assign different channels for these operations where existing channel usage is preempted by ATV channel assignments.

-- For planning purposes, assignments should be made to existing licensees where they currently operate or, in the case of permittees, where they propose to operate their NTSC channels. The planning process must start somewhere, and it seems most practical to start with the sites of existing NTSC operations. Using this as a starting point would not, however, preclude stations from seeking to use their ATV channels at different sites. This approach should maximize overall service to the public.

-- Where ATV channels would be assigned to existing NTSC licensees and permittees, the Commission has tentatively concluded that the Ashbacker doctrine does not require that competing applications be entertained. The Commission should adopt final confirmation of this principle on the basis that it has broad discretion to define the pool of eligible applicants. In the case of pending NTSC applications, the new ATV channel would be paired with the existing NTSC channel,

and the pool of eligible applicants to receive a license for it would be the existing applicants for the NTSC channel.

-- To facilitate the allotment/assignment process, the Commission should consider issuing an official list of all the licensees that would be eligible for ATV assignments and the placement (geographic coordinates) for the new ATV assignments.

-- To create a stable target, the Commission should also "freeze" the current table of allotments nationwide by declining to accept or act upon proposals to add additional stations, at least until the comprehensive ATV table is adopted. However, public broadcasters urge that exceptions to the freeze could be considered for applications for noncommercial educational stations filed by current noncommercial educational licensees or to serve areas of the country currently unserved by a public television signal.

### III.

The Notice should, in our view, also ask for comment on certain issues as to which the Commission will not have reached tentative conclusions. These issues include the following:

-- In many of the larger markets no spectrum will be left over for any ATV assignments other than those necessary to accommodate existing NTSC licensees, permittees or applicants. But in some markets, particularly smaller ones, additional ATV assignments would be possible. Should this additional spectrum be reserved for new ATV stations, or should it be used for some other purpose?

-- How should the Commission and the State Department initiate bilateral negotiations with Canada and Mexico over the revised ATV table of allotments? What role should the public play? (Note that in Docket No. 18261, the reallocation of channels 14-20 from broadcasting to land mobile was not coordinated in advance with Canada and Mexico and for this reason land mobile channels in the border region remain unused nearly twenty years later.)

-- Should ATV channels be subject to the same regulatory scheme with respect to cable carriage as NTSC channels?